

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
. Detroit, Michigan  
. January 22, 2014  
Debtor. . 3:00 p.m.  
. . . . .  
OFFICIAL COMMITTEE OF . Adv. No. 14-04015  
RETIREEES OF THE CITY OF .  
DETROIT, MICHIGAN, et al., .  
. Plaintiffs, .  
v. .  
. CITY OF DETROIT, MICHIGAN, .  
et al., .  
Defendants. .  
. . . . .

BENCH OPINION  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day  
By: ROBERT H. HAMILTON  
325 John H. McConnell Blvd., Suite 600  
Columbus, OH 43215-2673  
(614) 281-3848  
  
Jones Day  
By: HEATHER LENNOX  
222 East 41st Street  
New York, NY 10017  
(212) 326-3837  
  
Jones Day  
By: BRUCE BENNETT  
555 South Flower Street, Fiftieth Floor  
Los Angeles, CA 90071-2452  
(213) 243-2382  
  
For Financial Guaranty Insurance Company: Weil, Gotshal & Manges, LLP  
By: ALFREDO R. PEREZ  
700 Louisiana Street, Suite 1600  
Houston, TX 77002  
(713) 546-5040

## APPEARANCES (continued):

For Erste Ballard Spahr, LLP  
 Europaische By: VINCENT J. MARRIOTT, III  
 Pfandbrief-und 1735 Market Street, 51st Floor  
 Kommunalkreditbank Philadelphia, PA 19103-7599  
 Aktiengesellschaft (215) 864-8236  
 in Luxemburg, S.A.:

For Syncora Kirkland & Ellis, LLP  
 Holdings, Ltd., By: RYAN BLAINE BENNETT  
 Syncora Guarantee, WILLIAM E. ARNAULT  
 Inc., and Syncora 300 North LaSalle  
 Capital Assurance, Chicago, IL 60654  
 Inc.: (312) 862-3062

For the Official Dentons  
 Committee of By: SAM J. ALBERTS  
 Retirees: 1301 K. Street, NW  
 Suite 600, East Tower  
 Washington, DC 20005-3364  
 (202) 408-7004

For AFSCME Sub- Miller Cohen, PLC  
 Chapter 98, City of By: BRUCE A. MILLER  
 Detroit Retirees: 600 W. Lafayette Blvd., 4th Floor  
 Detroit, MI 48226  
 (313) 964-4454

For Retired Detroit Silverman & Morris, PLLC  
 Police and Fire By: THOMAS R. MORRIS  
 Fighters Associa- 30500 Northwestern Highway, Suite 200  
 tion and the Farmington Hills, MI 48334  
 Detroit Retired (248) 539-1330  
 City Employees  
 Association:

Also Present: Members of the Official Committee of  
 Retirees:

Terri Renshaw  
 Shirley Lightsey  
 Michael Karowski  
 Donald Taylor  
 Gail Wilson  
 Gail Turner  
 Robert Shinski  
 Edward McNeil

Court Recorder: Letrice Calloway  
United States Bankruptcy Court  
211 West Fort Street  
21st Floor  
Detroit, MI 48226-3211  
(313) 234-0068

Transcribed By: Lois Garrett  
1290 West Barnes Road  
Leslie, MI 49251  
(517) 676-5092

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1           THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan,  
3 and Case Number 14-04015, Official Committee of Retirees of  
4 the City of Detroit, Michigan, versus City of Detroit,  
5 Michigan.

6           THE COURT: It appears that everyone is here. Are  
7 the members of the Official Committee of Retirees here?

8           MR. ALBERTS: They are, your Honor.

9           THE COURT: May I ask each of you to step forward in  
10 turn and introduce yourselves? Step forward all the way to  
11 the lectern where we have a microphone. It doesn't matter  
12 the order. Just go ahead.

13           MS. RENSHAW: Good afternoon, your Honor. Terri  
14 Renshaw. I'm chair of the Official Committee.

15           THE COURT: Okay. Whoa, whoa, whoa. I've got a  
16 couple questions for you. And tell me what department you  
17 retired from.

18           MS. RENSHAW: The Law Department.

19           THE COURT: The Law Department.

20           MS. RENSHAW: Yes.

21           THE COURT: What was your position there?

22           MS. RENSHAW: At the time I retired, I was the  
23 deputy corporation counsel.

24           THE COURT: Okay. Thank you.

25           MS. LIGHTSEY: Good afternoon, your Honor. Shirley

1 Lightsey.

2 THE COURT: I remember you. You testified; right?

3 MS. LIGHTSEY: Last year, yes.

4 THE COURT: Yes. And remind me what your position  
5 was with the city.

6 MS. LIGHTSEY: I was a human resources manager for  
7 Detroit Water and Sewerage Department.

8 THE COURT: Thank you, ma'am.

9 MR. KAROWSKI: Good afternoon, your Honor. Michael  
10 Karowski. I retired from the city Law Department. I was  
11 there 15 years. I was in the municipal affairs section most  
12 of that time, and the last couple years I was in tax and  
13 revenue collection.

14 THE COURT: Um-hmm. As a lawyer?

15 MR. KAROWSKI: Yes.

16 THE COURT: Yes. Thank you, sir.

17 MR. TAYLOR: Donald Taylor.

18 THE COURT: Mr. Taylor, I remember you. You also  
19 testified, didn't you?

20 MR. TAYLOR: Yes, sir. I'm also the president of  
21 the Retired Detroit and Police Fire Fighters.

22 THE COURT: Thank you.

23 MS. WILSON: Gail Wilson. I receive retiree  
24 benefits as a survivor. My husband worked with the Detroit  
25 Department of Transportation for 31 years.

1 THE COURT: Okay. Thank you, ma'am.

2 MS. TURNER: Your Honor, Gail Turner, 33 years as a  
3 Detroit police officer. My last assignment was in charge of  
4 risk management for the Detroit Police Department.

5 THE COURT: Thank you.

6 MR. SHINSKI: Good afternoon. I'm Rob Shinski. I'm  
7 the treasurer with the Detroit Fire Fighters Association. I  
8 am the only active employee that's on the retiree committee.

9 THE COURT: Do you have any insight into why you  
10 were appointed even though you're not a retiree?

11 MR. SHINSKI: Well, I am DROP'd your Honor, so I --

12 THE COURT: You are what?

13 MR. SHINSKI: I am DROP'd.

14 THE COURT: What does that mean? Help me out.

15 MR. SHINSKI: That means that I receive a pension  
16 check every month into a separate account, and I continue to  
17 work.

18 THE COURT: You get a pension and you work?

19 MR. SHINSKI: It's called the DROP program, yes. My  
20 pension is frozen when I DROP'd.

21 THE COURT: Okay. We needn't delve into the  
22 details.

23 MR. SHINSKI: Okay.

24 THE COURT: It's beyond our scope today. Sir.

25 MR. MCNEIL: Good afternoon, your Honor. Edward

1 McNeil representing Sub-Chapter 98 AFSCME. I retired from  
2 the Parks and Recreation Department of the City of Detroit,  
3 was a tree officer.

4 THE COURT: Thank you. Yes.

5 MS. RENSHAW: We are missing one of our members  
6 today. The UAW representative is not -- did not attend our  
7 meeting today. That's why they're not here.

8 THE COURT: Wendy Fields-Jacobs?

9 MS. RENSHAW: That would be correct.

10 THE COURT: Does she regularly participate?

11 MS. RENSHAW: Someone from the UAW does regularly  
12 participate.

13 THE COURT: Oh, who is that?

14 MS. RENSHAW: We, under our bylaws, are allowed to  
15 have alternates and proxies, and it's either Niraj Ganatra or  
16 Mike Nicholson.

17 THE COURT: All right. Thank you. Thank you all.  
18 You may be seated. This matter is before the Court on two  
19 motions here today. The Court will first deal with the  
20 motion we have referred to as the art motion. This is a  
21 motion filed by several of the city's creditors asking this  
22 Court to appoint and direct the city to cooperate with a  
23 committee of creditors to appraise the value of the art  
24 collection of the Detroit Institute of Arts. The proposed  
25 goal of this art committee would be to establish an agreed

1 upon benchmark valuation of the art in advance of the plan  
2 confirmation process. It is argued that reaching a consensus  
3 on the value of the art now will avoid contentious litigation  
4 on this issue later at the plan confirmation stage.

5 The motion specifically requests that this Court  
6 direct the city to meet with the art committee as soon as  
7 possible to begin developing a strategy that considers  
8 potential viable options to monetize the art, to respond to  
9 any of the art committee's reasonable requests for  
10 information regarding the art, and, three, ultimately file a  
11 valuation report with the Court which hopefully would reflect  
12 the agreed-upon value of the art.

13 The creditors rely primarily on Section 105(a) of  
14 the Bankruptcy Code. This section of the Bankruptcy Code  
15 provides that the Court may issue any order, process or  
16 judgment that is necessary or appropriate to carry out the  
17 provisions of this title. The creditors submit that the  
18 creation of the art committee is necessary and appropriate in  
19 this case due to the best interest of creditors requirement  
20 for plan confirmation under Section 943(b)(7) of the  
21 Bankruptcy Code. Specifically -- or more specifically, they  
22 argue that in order for the city to meet its burden under  
23 Section 943(b)(7), it will need to establish by a  
24 preponderance of the evidence that its plan of adjustment  
25 maximizes the value of the art to enhance creditor



1 recoveries.

2           The city objects to the motion on several grounds.  
3 It argues that the creditors misstate the standard for  
4 judging whether the best interest of creditors requirement in  
5 Section 943(b)(7) has been met; that the motion amounts to a  
6 premature objection to a hypothetical plan of adjustment;  
7 that the relief requested violates Section 941 and 904(1) and  
8 (2) of the Bankruptcy Code; that Section 105 is not a proper  
9 basis for the requested relief; that the requested relief is  
10 unnecessary in light of the city's valuation efforts and with  
11 the valuation efforts it undertook with Christie's; and,  
12 finally, that granting the relief would not eliminate the  
13 potential for litigation regarding the art or its value.

14           The Court concludes that the motion must be denied  
15 because it lacks the authority to grant the requested relief.  
16 As the city properly points out, Section 1102(a)(2) is the  
17 only provision of the Bankruptcy Code which authorizes the  
18 Court to appoint creditors' committees and then only, quote,  
19 "when necessary to assure adequate representation of  
20 creditors," close quote. Here the creditors make only  
21 passing reference or arguments that the art committee is  
22 essential to ensure adequate representation of creditors.  
23 They certainly have not made a sufficient showing of that  
24 fact here. While the Court does have broad authority --  
25 excuse me -- under Section 105 of the Bankruptcy Code, it is

1 inappropriate to rely on Section 105 to circumvent the  
2 express requirements of other provisions in the Bankruptcy  
3 Code. In other words, the creditors may not rely on Section  
4 105 to evade the adequate representation of creditors  
5 requirement of Section 1102(a)(2).

6 This is particularly true given the constitutional  
7 restraints on the Court's authority imposed by Section 904 of  
8 the Bankruptcy Code. That section provides, quote,  
9 "Notwithstanding any power of the court, unless the debtor  
10 consents or the plan so provides, the court may not interfere  
11 with (1) any of the political or governmental powers of the  
12 debtor; (2) any of the property or revenues of the debtor; or  
13 (3) the debtor's use or enjoyment of any income-producing  
14 property." In light of these sections and the limitations  
15 they impose, a request like the present one must be closely  
16 scrutinized.

17 The creditors assert that the relief requested would  
18 not violate these provisions because the art committee would  
19 merely facilitate the calculation of an agreed-upon value of  
20 the art, which the Court, the city, and the creditors could  
21 then rely upon when evaluating the city's proposed treatment  
22 of all of its assets during the plan confirmation phase.  
23 They assert that this will save time and resources during  
24 that time period and, more importantly, that reaching a  
25 consensus ahead of time will enable creditors to make

1 informed and reasoned objections to a proposed plan.

2           The Court must reject these arguments if only  
3 because they do not address the concern that the Court lacks  
4 authority under Section 105 to do what is requested here.  
5 The Court further concludes, however, that even if it did  
6 have the authority and discretion to grant this motion, that  
7 discretion should not be exercised here. Any such request  
8 would be determined mostly by looking at what process should  
9 be crafted to best advance the case. The Court finds that  
10 the ordinary and usual process is what should be followed  
11 here. In that process, after the city files a plan and the  
12 parties file their objections, we can then determine an  
13 appropriate sequencing of the issues. One of the issues that  
14 is quite likely to be raised is the legal issue of what is  
15 the city's interest in the art, if any, and then whether the  
16 city's plan meets the best interest of creditors or that test  
17 in light of that interest. Now, however, is not the time to  
18 determine those issues or any plan confirmation issues.

19           It is noteworthy that the Michigan Attorney General  
20 has asserted that the art collection of the Detroit Institute  
21 of Arts is held by the city in a charitable trust and, thus,  
22 no piece in the collection may be sold, conveyed, or  
23 transferred to satisfy the city's debts or obligations. This  
24 is a serious argument. If that position is accepted by the  
25 Court, there would, of course, be no need to appraise the

1 art.

2 But, of course, the issue of what to do with the art  
3 is also tied up with feasibility. Even if the city does have  
4 control over the art and its disposition, the issue there  
5 would be whether the city's long-term revitalization and the  
6 feasibility of its plan would be impaired by any provision in  
7 the plan that proposes a disposition of the art even for  
8 substantial value. Again, now is not the time to determine  
9 any of these issues or to engage in any piecemeal litigation  
10 of a potential plan objection to potential plan provisions.  
11 These issues can only be determined in the broad context of a  
12 comprehensive process that systematically addresses and  
13 resolves all plan objections. For this reason, the Court  
14 finds that even if it did have the discretion to appoint an  
15 art committee, it would still deny the motion.

16 Now, the Court is not totally unsympathetic to the  
17 creditors' concerns. The Court encourages the city to be  
18 forthcoming with information regarding the art and its value  
19 and the interest it has in them, and, indeed, it has offered  
20 to be forthcoming here in court today. The Court agrees,  
21 however, with the city that the publication of Christie's  
22 report in part went a long way towards addressing these  
23 concerns.

24 At this point, the Court must also emphasize a point  
25 to the creditors which it stressed in its eligibility

1 decision. Selling assets without more will not solve the  
2 city's financial problems. Creditors would be much better  
3 served by working with the city to solve its long-term  
4 structural financial problems rather than on focusing on the  
5 treatment or disposition of one particular asset, especially  
6 an asset that is at least arguably essential for the city's  
7 long-term revitalization prospects. Accordingly, the motion  
8 is denied.

9           Turning now to the motion to dismiss the adversary  
10 proceeding, the Court must report that it is unable to  
11 resolve this motion at this time. It is going to take a much  
12 deeper analysis of the Stockton decision and the Orange  
13 County decision to determine whether this suit is barred by  
14 Section 904. The Court feels the strong need to exercise  
15 extreme care with the legal issue in this case that the city  
16 raises because it does appear to the Court that the potential  
17 for irreparable harm, as asserted by the plaintiffs here, is  
18 significant. Of course, there is also merit to the city's  
19 argument that in the absence of a recognizable claim -- that  
20 is, a claim with potential merit -- no amount of irreparable  
21 harm justifies a preliminary injunction under law.

22 Accordingly, the Court will adjourn this hearing to give a  
23 decision next Wednesday -- that's January 28th -- at 10 a.m.  
24 The parties should be prepared -- Tuesday. Tuesday, the  
25 28th? Tuesday, the 28th -- sorry -- at 10 a.m. The parties

1 should be prepared, however, at that time to proceed with an  
2 evidentiary hearing on a motion for preliminary injunction  
3 should the Court deny the motion.

4 In the meantime, the Court strongly implores the  
5 parties to negotiate the OPEB issues in good faith and with  
6 the sense of urgency that it deserves. At the same time,  
7 however, the Court must give one further word of caution.  
8 There are, as I stated earlier, 37 days until the deadline  
9 for the city to file a plan of adjustment, so this is a good  
10 opportunity for the Court to express to all of you what it  
11 expects in a plan. Of course -- well, Section 943 and 1129  
12 contain several requirements for the confirmation of a plan,  
13 and, of course, all of these requirements are important, and  
14 it will be up to the creditors to determine which, if any, of  
15 these requirements to assert in objecting to the confirmation  
16 of the city's plan.

17 There is, however, one requirement that is so  
18 crucial that the Court will insist on proof of it even if no  
19 one objects on this ground. That requirement is the  
20 requirement that the plan must be feasible. A plan that is  
21 not feasible will not meet the city's needs nor would it be  
22 in the best interest or any interest of the creditors or the  
23 residents of the city. The city should, therefore, be fully  
24 prepared for this issue at confirmation, and equally  
25 importantly all parties must fully accept this premise in

1 their plan negotiations. The Court must be very plain about  
2 this. Last week when the Court denied the city's motion to  
3 assume the forbearance agreement, it said, and I quote, "The  
4 Court stated earlier and states again that it will not  
5 participate in or permit the city to perpetuate the very  
6 kinds of hasty and imprudent financial decision-making that  
7 led to the disastrous swaps and COPS transactions. Those  
8 practices have already caused great harm to the city's  
9 creditors and to its citizens. In the Court's view, one goal  
10 of this Chapter 9 case is to end these practices so that the  
11 city can truly recover from its past mistakes and move  
12 forward, and the Court intends to conduct itself accordingly.  
13 In this case parenthetically -- if this case needs any  
14 further clarification, let me state that the Court intends to  
15 carefully scrutinize the feasibility of any plan of  
16 adjustment," close quote.

17 The Court later stated, quote, "In its eligibility  
18 opinion, the Court found that the city had entered into a  
19 series of bad deals to solve its financial problems. The law  
20 says that when the city filed this bankruptcy, that must  
21 stop. It also says that this Court must be the one to stop  
22 it, if necessary. It is necessary here. Accordingly, that  
23 motion is denied," close quote.

24 Everyone here must understand that these comments  
25 were not directed only to the financial creditors. They were

1 directed to all creditors and, indeed, to the city, all  
2 creditors, including the Retiree Committee. That's why the  
3 Court ordered the members of the Retiree Committee and its  
4 advisors here this afternoon. The Court will not permit the  
5 confirmation of the city's plan to be another bad deal like  
6 all the previous ones the city entered into with which we are  
7 now all too familiar. The plan of adjustment must be  
8 feasible, and at the confirmation hearing, the Court expects  
9 the city to prove feasibility through competent and credible  
10 testimony. Feasibility is straightforward to define. It  
11 simply means that the city can pay not only its ongoing  
12 operating obligations but also its revitalization expenses  
13 and its plan obligations. Although feasibility is easy to  
14 define, it will undoubtedly be very challenging for the city  
15 to actually implement. Just last month, the Court found as a  
16 fact that the city is service-delivery insolvent, meaning it  
17 does not have enough revenue to pay for basic services. To  
18 meet the test of feasibility, the city will have to prove  
19 that it has or will overcome that structural cash flow  
20 insolvency and much more.

21           Plan feasibility may well require a fundamental and  
22 profound change in the city's pension plan or in the city's  
23 healthcare obligations or in the city's collective bargaining  
24 agreements or in its obligations to its employees. These are  
25 issues that must be negotiated in good faith now with all of



1 the creativity that counsel and the other advisors in the  
2 case can muster and all with a view toward paying creditors  
3 what the city can pay within a feasible plan. Now is not the  
4 time for defiant swagger or for dismissive pound-the-table,  
5 take-it-or-leave-it proposals that are nothing but a one-way  
6 ticket to Chapter 18, and this is bankruptcy jargon for a  
7 second Chapter 9. To repeat, the Court will only confirm a  
8 plan that the city shows is feasible. The Court will not  
9 confirm a plan just to get a plan confirmed and to get the  
10 case done. The city's successful implementation of a plan  
11 and, indeed, its successful long-term revitalization depends  
12 on many variables and conditions and events. Many of them  
13 are out of its control and out of our control, but the one  
14 variable that we do have control over is the plan. If the  
15 plan is feasible because it promises more to creditors than  
16 the city can reasonably be expected to pay, it will fail, and  
17 history will judge each and every one of us accordingly.  
18 This is an enormous responsibility. Please use the next 37  
19 days wisely and with that admonition in mind. Anything  
20 further?

21 MR. BRUCE BENNETT: Nothing, your Honor.

22 MR. ALBERTS: Your Honor, in light of the Court's  
23 ruling, I just wanted to see if there was a suggested path  
24 forward for the hearing and whether the Court would -- wishes  
25 to perhaps abridge some of the testimony next Tuesday. Last

1 night we received the plaintiff's -- I'm sorry -- the city's  
2 opposition to the preliminary injunction. There were four  
3 declarations attached to it. We have some issues with things  
4 that have been said there in light of our request for prior  
5 information. We are going to seek to depose those four  
6 individuals, but I am wondering, given also the city's  
7 possible desire -- and I don't know if this is --

8 THE COURT: Let me stop you there.

9 MR. ALBERTS: Yeah.

10 THE COURT: I don't want any depositions between now  
11 and the preliminary injunction hearing. I want you to spend  
12 your time negotiating.

13 MR. ALBERTS: Okay. Well, we are at a disadvantage  
14 in the hearing. My concern is that if we do not --

15 THE COURT: Do the best you can to prove your case,  
16 and the city will do the best it can to prove its case, but  
17 much more important than spending your time preparing for  
18 this preliminary hearing, which, by the way, you've had  
19 months to do, is negotiating.

20 MR. ALBERTS: Well, actually, your Honor --

21 THE COURT: I can't implore that to you strongly  
22 enough.

23 MR. ALBERTS: Your Honor, our door has been open.  
24 Our attempts have been constant.

25 THE COURT: Good. Keep them up until next Tuesday.

1           MR. ALBERTS: We will attempt that, but, your Honor,  
2 there have been things alleged in the declarations that we  
3 have asked for for months repeatedly. Maybe what we will do  
4 is file a motion to strike, and that will be the better way  
5 to deal with it. I just don't -- I just don't --

6           THE COURT: It's not for me to tell you what to file  
7 or not file, but I am strongly suggesting to you that a much  
8 more effective route to get where you and your clients need  
9 to go in the long term is to start with your negotiations  
10 tomorrow morning at nine o'clock. Anybody else have  
11 anything? All right. We'll be in recess.

12           THE CLERK: All rise. Court is adjourned.

13           (Proceedings concluded at 3:25 p.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

January 25, 2014

\_\_\_\_\_  
Lois Garrett